

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VISTA HEALTHPLAN, INC.,	:	
and RAMONA SAKIESTEWA,	:	
on behalf of themselves and	:	Civil Action No. 1:01CV01295 (EGS) (AK)
all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BRISTOL-MYERS SQUIBB CO.,	:	
and AMERICAN BIOSCIENCE, INC.,	:	
	:	
Defendants.	:	
_____	:	

**ORDER CERTIFYING SETTLEMENT CLASS AND
PRELIMINARILY APPROVING PROPOSED SETTLEMENTS**

Upon review and consideration of the: (i) Stipulation of Settlement dated May 27, 2003, executed on behalf of Plaintiff Vista Healthplan, Inc., individually, and as representative of the Settlement Class (as defined below), and Bristol-Myers Squibb Company; and (ii) Stipulation of Settlement Dated May 27, 2003, executed on behalf of Plaintiff Vista Healthplan, Inc., individually, and as representative of the Settlement Class, and American BioScience, Inc. (collectively, the “Settlement Agreements”), and having held a hearing on June 3, 2003, it is hereby ORDERED as follows:

**Preliminary Approval of Settlements and
Conditional Certification of the Settlement Class**

1. The Court finds that it has jurisdiction over this Action.
2. The terms of the Settlement Agreements are preliminarily approved, subject to further consideration at the Fairness Hearing provided for below. The Court finds that the settlements reached in the Settlement Agreements are sufficiently within the range of

reasonableness so that notice of the proposed settlements should be given as provided below in paragraphs 6 through 9.

3. The Court conditionally certifies the following Settlement Class (“Class”):

All “Third-Party Payors” (defined immediately below) in the United States which, at any time from January 1, 1999 through December 31, 2002, paid, in whole or in part, for Taxol and/or generic paclitaxel in the United States. Excluded from the Class are Defendants, their subsidiaries, affiliates, officers and directors, and government entities.

“Third-Party Payor” shall mean any entity that (i) is a party to a contract, issuer of a policy, or sponsor of a plan, which contract, policy or plan provides coverage for the administration of Taxol or generic paclitaxel to natural persons, and (ii) is also at risk, pursuant to such contract, policy or plan, to pay or reimburse all or part of the costs of providing such coverage.

A self-funded health benefit plan for employees of a government entity that satisfies the definition of “Third-Party Payor” shall not be considered a “government entity.”

4. The Court conditionally finds that Vista Healthplan, Inc. is an adequate class representative for the Class. If the Settlement Agreements are terminated or are not consummated for any reasons whatsoever, the certification of the Class shall be void, and the defendants shall have reserved all of their rights to oppose any and all class certification motions and to contest the adequacy of Vista Healthplan, Inc. as a representative of any putative class.
5. The Court appoints, consistent with prior orders, Hanzman & Criden, P.A., as lead counsel for the Class (“Lead Counsel”).

Notice to Potential Class Members

6. Before or on June 20, 2003 (or 17 calendar days after entry of this Order), Lead Counsel shall direct the Claims Administrator (defined below) to mail by first class mail, postage prepaid,

copies of the Notice of Proposed Settlement and Settlement Hearing (“Notice”), substantially in the form attached as Exhibit 3 to Plaintiff’s Motion for Preliminary Approval, to all potential members of the Class, to the extent that they can be identified by reasonable diligence.

7. Lead Counsel shall also direct the Claims Administrator to have published a Summary Notice of Proposed Settlement and Settlement Hearing (“Summary Notice”), substantially in the form attached as Exhibit 4 to Plaintiff’s Motion for Preliminary Approval: (i) one day a week for two consecutive weeks in *National Underwriter: Life & Health/Financial Services Edition*; and (ii) one day a week for two consecutive weeks in the *New York Times*. Summary Notice shall be first published as soon as practicable after entry of this Order, and in all events, before June 30, 2003.
8. Prior to the Fairness Hearing, Lead Counsel shall file with the Court a sworn statement attesting to compliance with the provisions of paragraphs 6 & 7 above.
9. The notice to be provided to potential class members as set forth in paragraphs 6 & 7 above is found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness Hearing to all persons affected by and/or entitled to participate in the settlements reached by the parties, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Claims Administration

10. Lead Counsel has designated Complete Claim Solutions as the Claims Administrator, which designation is hereby approved, to be responsible for: (i) establishing an address and toll-free

phone number (to be included in the Notice and Summary Notice) to communicate with Class members; (ii) establishing a website to post the Notice, Summary Notice and Settlement Agreements and related documents; (iii) disseminating Notice to Class Members; (iv) receiving and maintaining documents sent from Class Members, including Proofs of Claim, Notices of exclusions, and other documents relating to claims administration; and (iv) administering claims for allocation of funds among Class Members consistent with the Settlement Agreements, Escrow Agreements and Court Order.

11. The Escrow Agent is directed to pay the Settlement Administrator the costs of the notice ordered by the Court consistent with the Escrow Agreements entered into by the parties.

Requests for Exclusion From the Class

12. Any member of the Class who wishes to be excluded from the Class shall mail a written request for exclusion (“Notice of Exclusion”) to the Claims Administrator, to be mailed and received no later than August 20, 2003, and clearly stating the following: the name, address, taxpayer identification number, telephone number and fax number of the entity that wishes to be excluded from the Class. The Notice of Exclusion shall include, among other things, a certification containing substantially the following language: “The undersigned hereby represents that he/she has authority to sign and submit this Notice of Exclusion on behalf of the above-named Third-Party Payor, and that information provided herein is based on company records kept in the ordinary course of business. The undersigned also certifies that he/she has not received any advice from the parties to this litigation concerning his/her or the Third-Party Payor’s fiduciary obligations under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1100, *et seq.*, or other laws governing their obligations to any class

member. The undersigned understands that by submitting this Notice of Exclusion, the Third-Party Payor identified above will not be entitled to receive any proceeds of the Settlements described more fully in the Notice. By signing below, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.” If the individual who signs the Notice of Exclusion is not a duly authorized officer or director (or like employee) of the entity wishing to be excluded, then the individual must attach written evidence of the Class Member’s grant of authority to the individual signing to execute the Notice of Exclusion on its behalf.

13. The entity mailing the Notice of Exclusion shall also be requested to provide information necessary to effectuate the Settlement Agreements (in particular, the Settlements’ reversion and termination contingencies), and if sufficient information is not forthcoming, the entity shall be subject to discovery via subpoena or other legal process. Any information provided by any entity requesting exclusion from the Class shall be kept confidential as provided for in the Settlement Agreements.
14. Any Class Member that submits a valid and timely Notice of Exclusion shall not be bound by the Settlement Agreements, shall not be entitled to share in the benefits of the Settlements, and shall not be bound by the Final Order and Judgment, whether favorable or adverse.
15. Any potential member of the Class that does not properly and timely mail a Notice of Exclusion as set forth in paragraphs 12 through 14 shall be included in the Class, and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such potential member of the Class shall have objected to the Settlements, whether or not such potential member of the Class received actual notice, and whether or not such potential

member of the Class makes a claim upon or participates in the Settlements.

Proof of Claim

16. The Claims Administrator shall include in the Notice sent to potential Class Members a Proof of Claim form substantially in the form attached as Exhibit 5 to the Motion for Preliminary Approval.
17. Each Class Member that wishes to receive a distribution from the Settlement Fund must mail a properly executed and complete Proof of Claim to the Claims Administrator at the address indicated in the Notice or Summary Notice, to be received and mailed on or before August 20, 2003.
18. Any Class Member who submits a Proof of Claim shall provide the Claims Administrator any requested information or documents to verify information appearing in the Proof of Claim.
19. The Allocation and Distribution Plan (defined in the Settlement Agreements) is hereby preliminary approved. The Preferential Fund shall be \$1,530,000. Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, which shall make a recommendation to the Court, as to the extent, if any, to which each claim should be allowed.
20. The Settlement Administrator will notify each Class Member that filed a Proof of Claim of any recommendation of disallowance, in whole or in part, of the Proof of Claim submitted by such Class Member and will set forth the reasons for any such disallowance. Class Members shall be permitted a reasonable period of time to cure any deficiency with respect to their respective Proof of Claim. A copy of such notification shall also be sent by the Claims Administrator to the Lead Counsel.

21. Any Class Member that does not submit a timely and complete Proof of Claim, or submits a Proof of Claim that is disallowed, shall be barred from participating in the Settlement but otherwise shall be bound by all of the terms and provisions of the Settlement Agreements.
22. Each Class Member that submits a Proof of Claim shall expressly submit to the jurisdiction of the Court with respect to the claims submitted and shall (subject to final approval of the Settlement) be bound by all the terms and provisions of the Settlement Agreement.

Confidentiality

23. Any information received by the Settlement Administrator in connection with the Settlements that pertains to a particular Class Member shall be kept confidential and shall not be disclosed to any other person or entity other than counsel for the parties and the Court.

Fairness Hearing

24. A Fairness Hearing shall be held on October 22, 2003 at 11:00 a.m. in Courtroom 1 before the undersigned to consider: (i) the fairness, reasonableness and adequacy of the Settlements; (ii) Class Counsel's motion for attorney's fees and expenses and application for incentive award; and (iii) whether to finally approve the proposed Allocation and Distribution Plan.
25. At least seven days prior to the date of the Fairness Hearing, Lead Counsel shall file its motion for final approval and its motion for attorney's fees and expenses and application for incentive award.
26. Any Class Member who wishes to comment in support of, or in opposition to, the fairness, reasonableness and adequacy of the Settlements or Class Counsel's motion for attorney's fees and expenses and application for incentive award must serve their comments and/or objections in writing, by mail, postage prepaid, to Lead Counsel and Counsel for both Bristol

and ABI, received no later than September 22, 2003, giving the Class Member's full name and address.

27. Any Class Member that has not filed a Notice of Exclusion in the manner set forth above may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlements or Class Counsel's motion for attorney's fees and expenses and application for incentive award; provided, however, that no person shall be heard in opposition to the fairness, reasonableness and adequacy of the Settlements or Class Counsel's motion for attorney's fees and expenses and application for incentive award, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before September 22, 2003, such person: (a) files with the Clerk of the Court a notice of such person's intention to appear along with a statement (including any supporting documentation) that indicates the basis for such person's opposition to the fairness, reasonableness and adequacy of the Settlements or Class Counsel's motion for attorney's fees and expenses and application for incentive award; and (b) serves copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Lead Counsel and counsel for both Bristol and ABI.
28. The date and time of the Fairness Hearing shall be set forth in the Notice and Summary Notice, but shall be subject to adjournment by the Court without further notice to the members of the Class other than that which may be posted at the Court and on the Court's website.

Other Provisions

29. Terms used in this Order that are defined in the Settlements Agreements, unless otherwise defined in this Order, are used in this Order as defined in the Settlement Agreements.
30. In the event the Settlements are terminated in accordance with the provisions of the Settlements Agreements, the Settlements and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreements, and without prejudice to the *status quo ante* rights of the Plaintiff and the Class, Bristol and ABI.
31. If the Settlements are terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that the parties will have sufficient time to prepare for the resumption of litigation.

SO ORDERED this 4th day of June, 2003.

The Honorable Emmet G. Sullivan
United States District Judge